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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,663	09/05/2003	Donald E. Weder	8403.936	8315

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EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,663

Applicant(s)

WEDER, DONALD E.

Examiner

Christopher P Bruenjes

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20030905.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Art Unit: 1772

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weder et al (USPN 4,989,396).

Weder et al teach a decorative wrapper for a floral grouping, the decorative wrapper comprising a sheet of material having an upper surface, a lower surface, a first side, a second

Art Unit: 1772

side, a third side and a fourth side, the sheet of material having a substantially trapezoidal configuration such that when the sheet of material is formed into the decorative wrapper about a floral grouping, the decorative wrapper is provided with a substantially frusto-conical configuration which closely approximates the configuration of the floral grouping discussed therein (Fig. 9 and col.3, 1.33-40). A bonding material disposed on at least a portion of the upper surface of the sheet so that the adhesive at the end of the material on the outside of the roll secures the remainder of the wrapper (col.7, 1.37-50). By securing the end of the material the bonding material is obviously substantially adjacent the fourth side thereof. Weder ('396) teaches that the wrapper wraps at least far enough round that there is an entire roll, which means at least a portion of the material overlaps itself. One of ordinary skill in the art would have recognized that the smaller the sheet is cut before allowing the wrapper to curl over itself, the less material is used. One of ordinary skill in the art would also recognize that the less material used the less expensive the wrapper is to produce.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to cut the sheet of material to a size that would only

Art Unit: 1772

allow the curl to only slightly overlap the fourth side containing the adhesive, in order to decrease the amount of material used to form the wrapping, when it is known to decrease the cost when less material is used.

2. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weder et al (USPN 4989,396) in view of Weder et al (USPN 4,733,521).

Weder '396 reference teaches all that is claimed in claim 1 as shown above and that at least one of the sides of the sheet of material is provided with linear, non-linear, or scalloped configurations (Fig. 9). Weder '396 reference fails to explicitly teach the sheet is made from waxed tissue. However, Weder '521 teaches that a decorative wrapper is made from many different materials including waxed and unwaxed papers (col.2, 1.64-68 and col.3, 1.1-3).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the applicant's invention was made, to have modified the Weder '396 floral wrapper by having modified the sheet of material to have been formed from waxed tissue, as taught by Weder '521, in order to wrap the floral arrangement in a readily available, old and well known material. Additionally, it has been held to be within the

Art Unit: 1772

general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

3. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weder et al (USPN 4,989,396) in view of Weder et al (USPN D356,027).

Weder '396 reference anticipates a decorative wrapper for a floral grouping, the decorative wrapper comprising a sheet of material having an upper surface, a lower surface, a first side, a second side, a third side and a fourth side (Fig. 9 and col.3, l.33-40), and that the sheet of material is further provided with a bonding material disposed on at least a portion of the upper surface thereof such that the sheet of material may be secured about the floral grouping via the bonding material, thereby holding the sheet of material in the configuration of the decorative wrapper (col.7, l.38-43), and at least one of the sides of the sheet of material is provided with linear, non-linear, or scalloped configurations (Fig. 9). Weder '396 reference fails to specifically teach the sheet being substantially triangular in shape. However, Weder '027 teaches a wrapper in which the sheet of material is substantially triangular in shape (Fig. 1).

Art Unit: 1772

Therefore, it would have been obvious to a person having ordinary skill in the art, at the time the applicant's invention was made, to have modified the Weder '396 floral wrapper by having modified the shape of the sheet of material to have been substantially triangular in shape as taught by Weder '027, in order to wrap floral arrangements which require a tapered shape from the stems to the blooms of the flowers. Additionally, based on the teachings of Weder '396 such a modification would have involved a mere change in the shape or form of a component. A change in shape or form is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1976).

Weder '396 and Weder '027 taken as a whole fail to explicitly teach that the overlapping material is minimized by limiting the overlapping material to a portion of the third side that substantially corresponds to and is bondingly connected to the portion of the fourth side on which the bonding material is disposed, Weder ('396) teaches that the adhesive secures the end of the material, which corresponds to the fourth edge, to the remainder of the roll (col.7, 1.44-50). One of ordinary skill in the art would have recognized that the smaller the sheet is cut before allowing the wrapper to curl over itself, the less material is used. One of ordinary skill in the art would also

Art Unit: 1772

recognize that the less material used the less expensive the wrapper is to produce.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to cut the sheet of material to a size that would only allow the curl to only slightly overlap the fourth side containing the adhesive, in order to decrease the amount of material used to form the wrapping, when it is known to decrease the cost when less material is used.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weder et al (USPN 4,989,396) in view of Weder et al (USPN D356,027) as applied to claim 4 and in further view of Weder et al (USPN 4,733,521).

Weder '396 and Weder '027 combined teach all that is claimed in claim 4 as shown above, but fails to explicitly teach the sheet being made from waxed tissue. However, Weder '521 teaches that a decorative wrapper is made from many different materials including waxed and unwaxed papers (col.2, 1.64-68 and col.3, 1.1-3).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the applicant's invention was made, to have modified the Weder '396 floral wrapper by

Art Unit: 1772

having modified the sheet of material to have been formed from waxed tissue, as taught by Weder '521, in order to wrap the floral arrangement in a readily available, old and well known material. Additionally, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fazzina et al (USPN 5,106,449); Weder (USPN 5,156,702); Temple (USPN 4,977,031); Weder et al (USPN 5,408,803).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Art Unit: 1772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes
Examiner
Art Unit 1772

CPB

August 5, 2005


HAROLD PYON
SUPERVISORY PATENT EXAMINER

1772

8/5/05